### TRADE SUMMARY

In 1999, the U.S. trade deficit with Colombia was \$2.7 billion, an increase of \$2.9 billion from the U.S. trade surplus of \$165 million in 1998. U.S. merchandise exports to Colombia were approximately \$3.5 billion, a decrease of \$1.3 billion (26.7 percent) from the level of U.S. exports to Colombia in 1998. Colombia was the United States' 30th largest export market in 1999. U.S. imports from Colombia were about \$6.3 billion in 1999, an increase of \$1.6 billion (34.9 percent) from the level of imports in 1998.

The stock of U.S. foreign direct investment (FDI) in Colombia in 1998 was an estimated \$4.3 billion, a decrease of 2.7 percent over the 1997 level. U.S. FDI was concentrated principally in the petroleum, manufacturing and financial sectors.

#### IMPORT POLICIES

#### **Tariffs**

Colombian import duties are quoted ad-valorem on the cost, insurance and freight (CIF) value of shipments. All duties – with a few exemptions – have been consolidated into the following four tariff levels: a) zero and five percent for raw materials, intermediate and capital goods not produced in Colombia; b) 10 and 15 percent for goods in the above categories but with domestic production registered in Colombia; c) 20 percent for finished consumer goods; and d) some exemptions to these general rules such as import duties for automobiles which remain at 35 percent, and agricultural products which fall under a variable price band import duty system. It is estimated that the basic weighted average of Colombian tariffs fluctuates between 11 and 13.5 percent. However, agricultural products under the Andean price band system are taxed above and beyond this standard tariff. Most imports are covered by a 15 percent value-added tax assessed on the CIF value of the shipment plus import duties.

The large number of integration agreements Colombia has signed with neighboring countries has created a complex system of tariffs that are applied according to the terms of the different treaties. In recent years Colombia has negotiated trade agreements with other Latin American and Caribbean countries. For instance. Colombia has a comprehensive Free Trade Agreement (FTA) with Mexico and Venezuela, known as the G-3 Agreement, which took effect in January 1995, and under which most tariffs are to be reduced to zero by the year 2007 (special treatment, however, was given to agricultural, agro-industrial, and automotive sectors). Colombia also has a partial FTA with Chile, which became effective in January 1994 and gradually eliminated all bilateral tariff and non-tariff barriers to zero. Colombia, along with the other members of the Andean Community. has entered into negotiations for an FTA with the countries of MERCOSUR. Over 10 different duties may be applied to a given product depending on whether it comes from the Andean Community countries, from Mexico under the G-3 Agreement or under the Latin American Integration Agreement (LAIA), from any other LAIA country, or from the Caribbean Community (CARICOM) countries. Colombia has bound its tariffs in the WTO at 30 percent for petrochemical products, 35 percent for a broad variety of industrial products, and 40 percent for textiles and apparel, footwear and other leather items, clothing, autos, and other products.

Since April 1995, Colombia has applied a variable import duty system on agricultural products commonly known as the "price band" system. Fourteen basic agricultural commodities (powdered milk, wheat, malting barley, yellow and white corn, crude palm and soybean oils, white rice, soybeans, white and raw sugars, chicken and turkey pieces, and pork meat), and an additional 147 commodities considered substitutes or related products, are subject to the variable import tariff price band system based on Andean Community boarddetermined ceiling, floor, and reference prices adjusted according to a CIF basis. The Andean Community price band system lacks transparency and can be manipulated to provide arbitrary levels of import protection, often

resulting in artificially high, prohibitive tariff rates. The Colombian Ministry of Foreign Trade issued Decree 2650 on December 24, 1999, establishing a maximum tariff rate of 40 percent for imports of soybeans and soybean products which before Decree 2650 were subject to an average tariff rate of 60 percent. This decision will benefit U.S. soybean and soybean product exports to Colombia in the year 2000 and beyond.

# **Non-tariff Measures**

Most agricultural products are issued automatic import licenses, but when the Colombian Ministry of Agriculture determines that imports are not needed and/or domestic production could suffer as a result, imports can be and are prohibited over indefinite time periods. Since the promulgation of Decree 2439 in November 1994, the Ministry of Agriculture has been required to approve import licenses for many agricultural items that compete with domestically produced commodities such as wheat, poultry, meat, malting barley, corn, cotton, rice, sorghum, wheat flour, oilseeds and their products (i.e., soybean meal and soybean oil). Colombia has implemented absorption agreements which require an importer to purchase a government-specified quantity of domestically produced goods as a precondition for the granting of import licenses. If the import licensing requirement for the products indicated above were eliminated, U.S. annual exports could increase \$12 million according to U.S. industry estimates.

Two agricultural products that have been subject to more restrictive import licensing requirements are fresh/frozen poultry parts and powdered milk. If the import licensing requirement for chicken and turkey parts were eliminated, the U.S. industry estimates that its annual exports would increase by approximately \$10 million.

Law 223, which took effect on January 1, 1996, subjected all distilled spirits to a value-added tax of 35 percent. However, the law makes an exception for whiskeys aged twelve or more years, which are subject to a 20 percent value-

added tax. Bourbon and Tennessee Whiskey – both distinctive products of the United States – are typically aged from four to eight years and, as a consequence, face a higher tax rate than most competing imported whiskeys which are aged longer. This distinction creates a competitive disadvantage for Bourbon and Tennessee Whiskey. The United States has protested this discrimination, but the Government of Colombia has failed to eliminate it.

Colombia requires import licenses for less than two percent of all products, primarily weapons and other products related to national defense, as well as "precursor" chemicals that may be used in refining cocaine. The majority of used goods – including cars, remanufactured auto parts, tires and clothing – are prohibited from import, and those that are allowed, such as machinery, are subject to licensing.

In many instances Customs clearance processes – for example, valuation of imported merchandise and payments of duties and other taxes at commercial banks – can be performed fairly rapidly. Colombia's pre-shipment inspection of imported equipment previously performed by several independent testing agencies caused unnecessary delays until eliminated in mid-1999.

# STANDARDS, TESTING, LABELING AND CERTIFICATION

The Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, provides quality certification and technical support services and serves as an Underwriters' Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC). According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market are excessive and often take as long as six to eight months to fulfill.

#### GOVERNMENT PROCUREMENT

The Government Procurement and Contracting Law, Law 80/93, sought to establish simpler procedures based on the principles of transparency and objective selection. It provided equal treatment to foreign companies on a reciprocal basis and eliminated the 20 percent surcharge previously added to foreign bids. It also eliminated unnecessary requirements and bureaucratic procedures that increased prices of public services and limited their availability. The law also settled procedures for the selection of suppliers, mainly through public tenders and in exceptional cases through direct contracts. In implementing Law 80, the Colombian government instituted a requirement that companies without local headquarters must certify that government procurement laws in the home country meet reciprocity requirements. Law 80 does not apply to contracts for the exploration and exploitation of renewable or non-renewable natural resources, their commercialization, and those activities performed by state companies involved in these sectors. Colombia is not a party to the WTO Agreement on Government Procurement.

# **EXPORT SUBSIDIES**

As a result of the policies of "apertura" (the opening of markets to foreign investment) and commitments made by Colombia to abide by the provisions of the GATT Subsidies Code, Colombia agreed to phase-out any export subsidies inconsistent with that Code. This process will continue under the WTO Agreement on Subsidies and Countervailing Measures. For instance, Colombia has notified the WTO that its "special machinery importexport system" and "free zones" do, in fact, constitute export subsidies. Also, Colombia's tax rebate certificate program (CERT) contains a subsidy component which the Government of Colombia has stated it will replace with an equitable drawback system, although it has not yet done so. On January 1, 2000, the Colombian government announced that it would eliminate

the subsidy component of the CERT as per WTO regulations.

However, the Colombian Government's recent efforts to increase exports have led to the formulation of a new customs code (Decree 2685 of December 28, 1999) which would provide for tariff exemptions on raw materials used by exporting enterprises. These incentives, which are very similar to the CERT, would be reinforced with "legal and tax stability agreements" providing for fixed tax and legal conditions over five and ten year periods to companies that develop special, and in some cases subsidize, export programs.

# INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia does not yet provide adequate and effective intellectual property protection. As a result, Colombia has been on the "Watch List" under the Special 301 provision of the 1988 Trade Act every year since 1989, and a 1999 out-of-cycle review placed Colombia once again in the same "Watch List" category. Colombia appears to have not yet fully implemented the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Rampant pirating of subscription television services has traditionally been problematic. However, as of January 2000, the Colombian government has shown significant progress in implementing a cable television licensing process designed to enable programmers to receive programming fees from signal providers. Colombia's Television Broadcast Law increased legal protection for all copyrighted programming by regulating satellite dishes, but enforcement has only recently begun through a licensing process that approved the issuance of 114 regional concession contracts by the end of 1999.

#### **Patents and Trademarks**

Two Andean Community Decisions on the protection of patents and trademarks and of

plant varieties have been in effect in Colombia since January 1, 1994. The Decisions are comprehensive and offer a significant improvement over previous standards on protection of intellectual property in the Andean Community countries. The patent regime in Colombia currently provides for a 20-year term of protection for patents and reversal of the burden of proof in cases of alleged patent infringement. The provisions of the Decisions covering protection of trade secrets and new plant varieties are generally consistent with world-class standards for protecting intellectual property rights, and provide protection for a similar period of time. However, the Decisions still contain deficiencies which must be rectified in order to ensure compliance with the WTO TRIPS Agreement. In June 1996, Colombia ratified the Paris Convention for the Protection of Industrial Property, which went into effect in September 1996.

Colombian trademark protection requires registration and use of a trademark in Colombia. In a 1998 decree, Colombia announced that registration of a trademark must be accompanied with its use in order to prevent parallel imports. Trademark registrations have a ten-year duration and may be renewed for successive ten-year periods. Priority rights are granted to the first application for a trademark in another Andean Community country or in any country which grants reciprocal rights. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement in the trademark area remains weak and the backlog of pending cases in the Superintendency of Industry and Commerce stands at approximately 25,000 cases.

# Copyrights

Andean Community Decision 351 on the protection of copyrights has been in effect in Colombia since January 1, 1994. Colombia also has a modern copyright law: Law 44 of 1993. The law extends protection for computer software to 50 years, but does not classify it as a literary work. Law 44 and Colombia's civil code include some provisions for enforcement of

intellectual property and have been used to combat infringement and protect these rights. Colombia belongs to both the Berne and the Universal Copyright Conventions. Decision 351 provides a generally Berne-consistent system. Semiconductor layout designs are not protected under Colombian law.

A new Intellectual Property Rights (IPR)
Investigative Unit was created within the
Colombian government's Office of the
Prosecutor General. The IPR Unit started
operating in November 1999, and it was formed
in part to address U.S. concerns about the
Colombian government's commitments to
reducing copyright violations in the areas of
television programming, records, books, and
software. The unit has opened 140 cases against
pirate TV operators as well as a case against
several telecommunications companies accused
of offering illegal "callback" services.

Colombia's 1993 Copyright Law significantly increased penalties for copyright infringement, specifically empowering the Prosecutor General's office to combat piracy. Colombia ratified the Andean anti-piracy convention on February 25, 1999. The Colombian Government also issued a presidential directive mandating that all government entities purchase only legally copyrighted software and other goods protected by international copyright law. Colombia's Television Broadcast Law potentially increases protection for all copyrighted programming by regulating satellite dishes. In 1999, the Colombian National Television Commission (CNTV) took significant action to license legitimate pay television operators and to pursue pirate operators. Since November 1999, 117 concessions have been granted. All beneficiaries will have six months to become fully compliant under the conditions set by the 10-year concession agreements. CNTV also made efforts to pursue pirate operators by initiating investigations of 282 suspected pirate operators, eight of which so far have incurred sanctions. However, enforcement of copyright laws is still insufficient and U.S. industry estimates that the majority of the videocassette,

sound recording, and business software products in the country are pirated.

#### SERVICES BARRIERS

In the General Agreement on Trade in Services (GATS), Colombia undertook commitments in the finance, tourism, law, accounting, mining, telecommunications, construction and engineering sectors. However, Colombia maintains barriers in a number of service areas, including audiovisual, data processing and professional services. In some industries, percentage limits are placed on foreign equity participation. In addition, a minimum of 50 percent of any television commercial for public broadcast network programming must be produced locally.

Cargo reserve requirements in transport have been eliminated. However, the Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of nations which impose reserve requirements on Colombian vessels.

Foreign law firms are not permitted to have a commercial presence in Colombia unless the firm is headed by a Colombian attorney. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law and construction. For firms with more than 10 employees, no more than 10 percent of the general workforce and twenty percent of specialists can be foreign nationals.

### **Financial Services**

In 1991, Colombia promulgated Resolution 51, which permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians. Prior approval from the Banking Superintendency is necessary for a foreign investor (acting as an individual or an investment fund) to acquire an equity participation of five percent or more in a Colombian financial entity. The establishment

of a financial institution with foreign capital also requires authorization from the Banking Superintendency.

Colombia denies market access to foreign marine insurers. Colombia requires a commercial presence to sell all other insurance, except international travel or reinsurance. Colombia permits 100 percent foreign ownership of insurance subsidiaries, but the establishment of branch offices of foreign insurance companies is not allowed.

Foreign portfolio investment must be made through mutual funds. No single fund or fund's beneficiary may hold 10 percent or more of the voting stock in a Colombian company. For institutional funds organized under collective accounts, the limit is 40 percent of the voting stock. Financial institutions are prohibited from making loans to broker-dealer, fiduciary and pension fund management subsidiaries.

In March 1997, the Bank of the Republic created a reserve requirement on all foreign loans over six months, designed to reduce the amount of foreign private debt. Thirty percent of all proceeds from foreign loans were required to be left on deposit with the Central Bank in a noninterest bearing account for 18 months. The deposit requirement was reduced to 25 percent in February 1998, when the foreign exchange rate threatened to exceed the top of the band, and was again reduced to 10 percent in September 1998 (the term of the deposit requirement was also reduced to six months), as a means to increase liquidity, lower interest rates and reduce pressures on the price of the dollar. In January 1999, in an effort to stimulate imports, the Bank of the Republic completely removed the deposit requirement for importrelated borrowing while maintaining a 10 percent deposit requirement on export-related foreign borrowing operations.

#### **Basic Telecommunications Services**

In the WTO negotiations on basic telecommunications services, Colombia made commitments on most basic telecommunications

services and adopted, with several clarifications, the WTO reference paper on pro-competitive regulatory principles. However, Colombia specifically prohibited "callback" services. Currently foreign investment is allowed in telecommunications firms but under the WTO agreement, Colombia reserves the right to limit foreign investment in these firms based on an economic needs test. While Colombia has allowed new competitors into long distance and international services, high license fees are a significant barrier to entry.

# **Television Local Content Quotas**

The Television Broadcast Law (Law 182/95) allows foreign direct investment in the Colombian motion picture industry, but limits foreign investment to fifteen percent of the total capital of local television programming production companies. The law increased restrictions on foreign content in broadcasting and imposed a complicated, burdensome system of sub-quotas for different hours of the day. Retransmissions of local productions are calculated to fulfill only part of the national content requirement. Foreign talent may be used in locally produced programming, but limits are set by the quasi-independent National Television Commission (CNTV).

Colombian television broadcast laws (Law 182/95 and Law 375/96) impose several restrictions on foreign investment. For example, foreign investors must be actively engaged in television operation in their home country. Their investments are limited to fifteen percent of the total capital of local television production companies and must involve an implicit transfer of technology. At least 50 percent of programmed advertising broadcast on television must have local content. CNTV has the authority to reduce these restrictions, but has not taken action in this area.

## INVESTMENT BARRIERS

Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia imposed local content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. Such requirements are prohibited by Agreement on Trade-Related Investment Measures (TRIMS). Under this Agreement, Colombia was obligated to eliminate TRIMS by the year 2000. The latest Andean Automotive Policy Council determined in December 1999 that it would not eliminate all content requirements, but instead has decided to increase at least one requirement gradually to 34 percent by the year 2006. This revised automotive policy may be inconsistent with Colombia's WTO obligations under the TRIMS Agreement. The United States is working in the WTO to ensure that WTO members meet these obligations.

Under the TRIMS Agreement, Colombia was also permitted to maintain its absorption policy (see Non-tariff Measures) until January 2000. However, Colombia has requested an extension of this deadline. The United States is working with other WTO Members to effect a case-by-case review of all TRIMS extension requests, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement.

Investment screening has been largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory. Legislation grants standard national treatment to foreign direct investors and permits complete foreign ownership in virtually all sectors of the Colombian economy. However, since 1994, in an effort to curb money laundering, the Colombian government has prohibited foreign direct investors from obtaining ownership in real estate not connected with other investment activities. All foreign investment in petroleum exploration and development in Colombia must be carried out under an association contract between the foreign investor and Ecopetrol, the state oil company.

#### ELECTRONIC COMMERCE

Electronic commerce in Colombia is primarily regulated by Law 527 of August 28, 1999. The

law assigns organizational, inspection, vigilance and sanctioning responsibilities to the Superintendency of Industry and Commerce. The Superintendency regulates certifying agencies, which are the only entities authorized by law to provide for registration, data transmission and reception services, and issuance of certificates related to electronic agreements. Law 527/99 provides the same contractual and legal validity to electronic data transfer as that of hard copies. For a digital signature to be valid, it must be verifiable, must be under the unique control of the person using it, and must be linked to the information or message being transferred. Certifying agencies (local or foreign) must be authorized by the Superintendency of Industry and Commerce to operate in Colombia.

Until validation procedures are implemented, electronic commerce applications will likely remain limited. Twelve of the largest domestic internet service providers, led and coordinated by the Colombian Chamber of Information and Telecommunications (CCIT), joined in November 1998 to build and operate the first Network Access Point (NAP) in the Andean region. The various partners which undertook the NAP project supply 80 percent of the internet service demand in Colombia, estimated at 1.2 million subscribers in 1999. Forty companies currently provide internet subscription services in the fifteen largest cities. As of year-end 1999, it is estimated that 200,000 internet subscribers used electronic commerce for virtual shopping in Colombia.